IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

WP(C).No. 20334 of 2004(U)

OS.203/1995 of MUNSIFF COURT, ALATHUR

.....

PETITIONERS:

1. YASODA, W/O.LATE SUDEVAN,
   KARAMPADAM, MUDAPPALLUR, ALATHUR TALUK,
   PALAKKAD DIST.

2. MUKESH, S/O.LATE SUDEVAN,
   DO. DO.

3. SURESH, DO. DO.

4. MAHESH, DO. DO.

BY ADV. SRI.S.ANANTHAKRISHNAN

RESPONDENTS:

1. JOY, PAYIKANDATHU VEEDU,
   PEECHI VILLAGE, TRISSUR TALUK,
   TRISSUR.

2. THATHA, PATHIRAPARAMBIL HOUSE,
   MANAPPADAM DESOM, PUTHUCODE AMSOM,
   ALATHUR TALUK, PALAKKAD DIST.

3. KUNCHI, PUTHANKULAMBU,
   ELAVAMPADAM, KIZHAKKENCHERRY AMSOM,
   ALATHUR TALUK.

4. KALUKUTTY, PUTHANKULAMBU,
   ELAVAMPADAM, KIZHAKKENCHERRY AMSOM,
   ALATHUR TALUK.

BY ADV. SRI.P.VIJAYA BHANU
SMT.E.SHIJI ELEZEBATH PAUL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 20334 OF 2004

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 : TRUE COPY OF THE ORDER DT.28.05.2004 IN IA NO.2008 OF 2003.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 20334 OF 2004

Dated this the 12th day of June, 2007

JUDGMENT

It is submitted that the issue involved in this writ petition is between the petitioner and the 2nd respondent plaintiff alone and that the other respondents are only pro-forma parties. I accept the above submission and dispense with issuance of notice to respondents 1 and 3. The 3rd respondent is already reported dead, but steps need not be taken against the legal heirs of the 3rd respondent.

2. Ext.P1 order of the District Judge dismissing an application for condonation of the delay caused in the matter of seeking impleadment in the appeal is under challenge in this Writ Petition under Article 227. The husband of the first petitioner and the father of the others, one Sri.Sudevan was the first appellant before the District Court. The second appellant was the assignee of Mr.Sudevan. In the appeal, they impugned the decree of partition passed by the learned Munsiff in OS No.203 of 1995. The contention of Sri.Sudevan before the trial court was that the property in question was not liable to be partitioned and that the same had been held by him on an oral lease and following that lease he had obtained Ext.B1 from the Land Tribunal. The above contention was repelled by the learned Munsiff on the basis of

Sri.Sudevan's oral evidence. The court, however, found that the second appellant is a bonafide purchaser and that he will get equity to the extent of ¼ th share to which Sri.Sudevan was entitled in the suit property. Sri.Sudevan died on 31.12.2000. It appears that the matter was not reported to the court and when the appeal was peremptorily posted on 17.01.2003, the counsel for the appellant reported no instructions and accordingly, the appeal was dismissed. IA No.2008 of 2003 seeking condonation of delay of 867 days and a separate IA seeking the impleadment was filed by the legal heirs of Sri.Sudevan on the ground that they did not have any information regarding the appeal and came to have the information only when the 3rd respondent-sister of Sri.Sudevan received notice of the final decree. The application was resisted by the plaintiffs. Evidence was taken and the second petitioner was examined. The learned District Judge appreciating the evidence as well as the circumstances attending on the case concluded that the version of the petitioners that they came to have knowledge about the litigation only when the 3rd respondent received notice was untrue. Even though Sri.S.Ananthakrishnan, counsel for the petitioners would make fervent submissions before me and even described, Ext.P1 order as unsound, since there is no case for the respondents that there was close relationship between the petitioners and the 3rd respondent. The

learned District Judge, according to counsel was not at all right in concluding that in view of the close relationship between Sri.Sudevan and the 3rd respondent, the petitioners also will have information regarding the litigation, I am not inclined to accept the submission. The jurisdiction of this Court under Article 227 is visitorial in nature and is to be exercised in exceptional cases. Guaging Ext.P1 by the parameters applicable to the exercise of that jurisdiction, it cannot be said that Ext.P1 is totally unreasonable or violative of law.

Having gone through the preliminary judgment which was impugned in the appeal before the District Court, I find that appreciation of DW1's evidence by the learned Sub Judge was quite proper and that the only relief which could have been aspired for, by the defendants is actually granted under the preliminary decree itself. Challenge against Ext.P1 fails on this reason also and the Writ Petition is dismissed. No costs.

PIUS C. KURIAKOSE, JUDGE

btt